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A Guide to the Labour Relations Code

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November 1988

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Calgary, Alberta
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Phone: 297-6251

Publications Services
11510 Kingsway Avenue
Edmonton, Alberta
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The Board also will make available on request its Rules of Procedure, Voting Rules and information bulletins, each of which covers the policies and procedures of the Board in a specific area. A list of the Information Bulletins available at the time of publication of this guide is on Page 74.

Caution: This guide has no legal authority. With respect to any particular problems, the Labour Relations Code, including any amendments, must be consulted for actual wording. This guide is intended only as a simplified reference to the Labour Relations Code.

Throughout the text, section numbers of the Labour Relations Code to which readers should refer are shown in brackets.

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Chairman's Message

Good working relationships between employees, their trade unions and employers benefit everyone in society. The Labour Relations Code sets new rules to govern labour-management relations. The Code places increased emphasis on the importance of open, honest and direct communication among employers, employees and the trade unions that represent them.

The Labour Relations Board continues to play a vital role in the labour relations process. The Board has revised its policies and procedures to meet the challenge of the new Code efficiently. In carrying out its duties the Board will strive to continue its reputation for fairness, independence and impartiality.

The Guide to the Labour Relations Code was prepared by the Labour Relations Board to provide an easy-to-read, interpretive overview of the key provisions of the Code. Its purpose is to increase awareness and understanding of the legislation and its application and enforcement.

The Code reaffirms the important principle that trade unions, employees and employers are directly responsible for managing their relationships in the workplace. Too often, relationships deteriorate through misunderstanding. The Board hopes this guide will help those involved in labour relations in Alberta to appreciate their rights and their responsibilities.

Andrew C.L. Sims
Chairman,
Labour Relations Board

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Preface

The Labour Relations Board has prepared this guide to the Labour Relations Code with the hope that employees, employers, trade unions, students and the public may acquire a better understanding of the Code and its administration by the Labour Relations Board. The Labour Relations Code is subject to amendment from time to time, and the policies of the Board in interpreting and administering the Code change and evolve over time. The staff of the Labour Relations Board and of Alberta Labour cannot provide legal advice, but they may be able to direct an individual to the appropriate section of the Code and to describe the policies and procedures of the Board. For further information or for more copies of this guide, contact:

Calgary Manager
Labour Relations Board
Deerfoot Junction
Tower 3
1212 - 31st Avenue N.E.
Calgary, Alberta
T2E 7S8
Phone 297-4333
Fax: 297-5884

Director of Settlement
Labour Relations Board
503, 10808 - 99th Avenue
Edmonton, Alberta
T5K 0G5
Phone: 427-8547
Fax: 422-0970

For information about the mediation processes and certain collective bargaining provisions contained in the legislation, contact:

Alberta Labour
Mediation Services
Branch
Deerfoot Junction
Tower 3
1212 - 31st Avenue N.E.
Calgary, Alberta
T2E 7S8
Phone: 297-4347

Alberta Labour
Mediation Services
Branch
905, 10808 - 99th Avenue
Edmonton, Alberta
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Acknowledgements

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Labour Relations in Alberta

The Labour Relations Code applies to about two-thirds of all unionized employees in the province. It excludes employers and employees in the provincial government, farm or ranch labour, domestic work and in industries falling under federal jurisdiction. Self-employed workers are not covered by the Code. Some other employees in Alberta have their labour relations governed entirely by special acts, such as the Colleges Act and the Technical Institutes Act, or partially so, as is the case under the Police Officers Collective Bargaining Act and the School Act.

The Code also excludes people who, in the Board's view, exercise managerial functions or who are employed in a confidential capacity in matters related to labour relations. It does not apply to fire chiefs or deputy fire chiefs, or to doctors, dentists, architects, engineers and lawyers while they are employed in their professional capacities (Section 1(l)).

The Code contains a number of provisions outlining the rights and responsibilities of employers, trade unions and employees in labour relations. This guide is divided into six major chapters, as described below.

In Alberta, employees have the right to collective bargaining with their employers. The Labour Relations Code guarantees this right and establishes methods for employees to choose trade union representation. The Code describes how a trade union bargains with an employer over terms and conditions of employment to arrive at a collective agreement. Rules of fair play are set out to govern trade unions, employers and employees in their labour relations activities.

The Labour Relations Board

The Alberta Labour Relations Board, an independent and impartial tribunal, is responsible for the day-to-day application and interpretation of these rules as well as for processing the various applications required by the Code.

The Labour Relations Code encourages parties to settle their disputes, wherever possible, through honest and open communication. The Board offers informal settlement options to the parties, but it also has inquiry and hearing powers to make binding rulings whenever necessary.

Collective Bargaining

Collective bargaining is the process of bargaining between a trade union and an employer or employers' organization over the terms and conditions of employment that will govern a group of employees. These terms and conditions form a binding document called a collective agreement. When a union is certified, or toward the end of an existing collective agreement, a notice to bargain will start the bargaining cycle. Negotiation meetings follow, with mediation available to encourage settlement.

Usually, a collective agreement can be arrived at through open and honest discussion, but if it cannot, the Code provides assistance to the parties. In some cases, the dispute will lead to a strike or lockout. The Code imposes certain restrictions on strikes and lockouts (their timing and how notice is to be served, for example). During any strike or lockout the Labour Relations Board can supervise picketing activities.

Trade Union Bargaining Rights

The certification system allows employees to decide in a democratic way whether or not they wish to be represented by a trade union. A certificate, if granted, gives a trade union bargaining rights on behalf of a group of employees. Similar procedures allow changes

to, or cancellation of, these bargaining rights, as the circumstances of employment or the wishes of the employees change.

The Collective Agreement in Operation

A collective agreement sets out terms and conditions of employment such as wages, holidays and seniority. It covers all employees in a bargaining unit, as defined in the agreement. The Code gives trade unions certain rights and responsibilities in respect of the collective agreement and the employees they represent.

An important feature of any collective agreement is the mechanism used to resolve disputes about the agreement's meaning or application, usually by a grievance procedure and arbitration.

Unfair Labour Practices

To protect the rights and responsibilities it confers, the Labour Relations Code sets out rules of conduct for labour relations. Failing to follow these rules is to commit a prohibited practice, often called an unfair labour practice. The Code gives the Labour Relations Board the task of resolving prohibited practice complaints. The Board can inquire into such complaints, hold hearings and issue decisions to remedy any conduct found to be contrary to the Code.

The Construction Industry

The construction industry represents a significant and unique part of the workforce, and the Labour Relations Code establishes some special procedures and a special bargaining cycle for that industry.

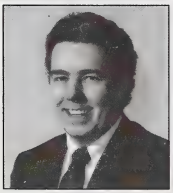
The Labour Relations Board

The Labour Relations Board

The Board is the independent and impartial tribunal responsible for the interpretation and enforcement of the Labour Relations Code. It processes applications and holds hearings. The Board actively encourages dispute resolution, employs officers for investigations and makes major policy decisions. The Board has offices in both Edmonton and Calgary.

Board Membership

The Board is made up of a chairman, three vice-chairmen, and a number of part-time members with equal representation from labour and management. All members are appointed by the Lieutenant-Governor in Council (Cabinet) for their experience and knowledge of labour relations.



Andrew Sims - Chairman

Before being appointed chairman of the Alberta Labour Relations Board, Andy Sims was a part-time vice-chairman. He was also a senior partner in the law firm of Faulkner, Sims and Kent. He has had considerable experience as a lawyer practising in the labour relations field throughout the province. As chairman, he presides at hearings and has overall responsibility for the affairs of the Board.

William Canning - Vice-chairman

Bill Canning has been a vice-chairman of the Board since 1978. Before his appointment he held positions as a Board officer, Board registrar and secretary.

Gerald Lucas, Q.C. -
Vice-chairman

Gerry Lucas is a senior partner in the law firm of Lucas, Bishop and Fraser. He is a senior solicitor whose practice has for many years included labour relations. He has considerable experience as an arbitration chairman and has acted as counsel in all types of labour relations matters.

Keith Aldridge - Vice-chairman

Keith Aldridge was a part-time Board member from 1978 to 1985 and was appointed a full-time vice-chairman of the Board in December 1986. Before that appointment, he held senior industrial relations positions in various manufacturing industries.

Zale Asbell - Member

Zale Asbell is the manager of human resources (Canada) for CBR Cement Canada Ltd. He has responsibility for administering approximately 40 collective agreements in the construction and industrial spheres. Zale was appointed to the Board in 1988.

Scott Boyd - Member

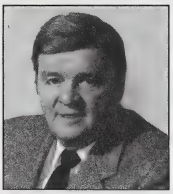
Scott Boyd is employed by Canada Safeway Ltd. as manager of its industrial relations department for the Calgary and Edmonton divisions. He has substantial experience in the negotiation and administration of collective agreements. He was appointed to the Board in 1986.

William Currie - Member

Bill Currie was appointed to the Board in 1988. He is the director of human resources with the Calgary District Hospital Group. He is active in the Alberta Hospital Association and has extensive labour relations experience within the hospital industry.

Raymond Drisdelle - Member

Ray Drisdelle has been a Board member since 1980. He is currently an international representative with the United Brotherhood of Carpenters and Joiners of America for western Canada and has particular expertise in construction and industrial plant labour relations.



David Fagan - Member

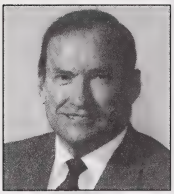
Dave Fagan is the manager of construction labour relations for M. W. Kellogg Company Ltd. He has many years' experience in the construction industry and was formerly the business manager of the Boilermakers Union. He was appointed to the Board in 1986.

Lynda Flannery - Member

Lynda Flannery is the staffing, employee and labour relations manager for Husky Oil Operations Ltd. She acquired labour relations experience in plants in Husky's Alberta and B.C. refineries as well as in construction with the Nova group of companies and Construction Labour Relations, an Alberta Association. She has been involved in labour relations committees with the Chamber of Commerce, Construction Owners Association and the oil industry.

William Flookes - Member

Bill Flookes is the president of the Brewery Workers Union, Local 287. He is an employee of the Carling O'Keefe Brewery in Calgary and has been a member of the Board since 1983.



Mike Halpen - Member

Mike Halpen is vice-president, human resources, for TransAlta Utilities Corporation. Mike had labour relations experience in the oil and gas and petrochemical industries before joining TransAlta in 1969.

Ken Kreklewetz - Member

Ken Kreklewetz is the manager of industrial relations for the City of Edmonton and has experience working with a large number of employees in a multi-bargaining-unit situation. He is an active participant in the affairs of the Alberta Urban Municipalities Association and has been a member of the Board since 1984.

Frank Kuzemski - Member

Frank Kuzemski is the Board's longest-serving member, having been appointed in 1972. Until his retirement, he was the area supervisor for the United Steelworkers of America. He has served on the executive boards of the United Way and the Alberta Federation of Labour.

Normand Leclaire - Member

Norm Leclaire is a business representative for the United Food and Commercial Workers Union who serves a number of local unions and employees in the retail and packing house industries. He has been a Board member since 1983.

Angus MacDonald - Member

Angus MacDonald is the western manager of industrial relations for Petro-Canada Ltd. He has many years of labour relations experience acquired as the manager of industrial relations for the City of Calgary and before that as the president of the Amalgamated Transit Union in Calgary. Angus has been a member of the Board since 1980.

Douglas Mitchell - Member

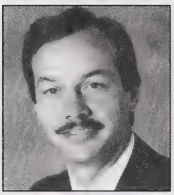
Doug Mitchell is a consultant in industrial relations and human resources with Canadian Utilities Ltd. He has been active on the labour relations committee of the Chamber of Commerce and in the Personnel Association of Edmonton. He has been a member of the Board since 1980.

Jack Murray - Member

Jack Murray has been on the Board since 1981. He has been a representative of the Canadian Union of Public Employees for many years and currently serves as CUPE's Alberta regional director. He has wide experience in the municipal and hospital industries.

John Rodden - Member

John Rodden is a district representative of Operating Engineers, Local 955, currently in charge of servicing that union's stationary and mining divisions. He has many years' experience in the construction industry and has been active in the Building Trades Council. He was appointed to the Board in 1986.



Larry Schell - Member

Larry Schell is an assistant business manager for the International Brotherhood of Electrical Workers. He has labour relations experience negotiating, organizing and servicing in both the construction and non-construction sectors. Larry has been a member of the Board since 1984.

Garry Shury - Member

Garry Shury is the western co-ordinator of the Energy and Chemical Workers Union as well as vice-president at large of the Alberta Federation of Labour. He has many years of labour relations experience negotiating, organizing and servicing in western Canada primarily in the oil, gas and chemical industry. Garry was appointed to the Board in 1988, but will be leaving shortly to take a full-time position on the Workers' Compensation Appeals Board.

Sheryl (Wowk) Teague - Member

Sheryl Teague is an employee of Air Canada. She is the district chairperson of the Canadian Auto Workers Union District 104 and also serves on the executive council of the Alberta Federation of Labour. Before being appointed to the Labour Relations Board in 1986, she served as a member of the Alberta Human Rights Commission.

Kathy Thompson - Member

Kathy Thompson is a director of the Alberta Association of Registered Nursing Assistants and has 15 years of labour relations experience. She is a past member of the board of Westerra Institute of Technology and a current member of the board of the Canadian Federation of Labour, and the Alberta and Northwest Territories Council of Labour. Kathy was appointed to the Board in 1983.

Clifford Williams - Member

Cliff Williams is president of Williams Plumbing and Heating Ltd. and has many years of practical experience in labour relations. He has been very active in Construction Labour Relations, an Alberta Association as a member, director and a past chairman. Cliff has served on the Board since 1983.

Dennis Bykowski - Director of Settlement

The Board's Director of Settlement is responsible for setting up pre-hearing procedures to resolve disputes. He has overall responsibility for the acceptance and processing of applications and for monitoring their progress. The director may assign officers to conduct preliminary fact-finding investigations or to assist the parties in informally resolving matters.

Before his appointment, Dennis was the Board's registrar for northern Alberta, a labour relations officer and a labour standards officer.

Vince Paniak - Director of Administration

The Director of Administration is responsible for the Board's staffing, facilities, budget and publications. Before this appointment, Vince Paniak was the registrar of the Employment Standards Branch of Alberta Labour in Edmonton.

Jim Jung - Calgary Manager

The Calgary Manager performs the role of Director of Settlement for southern Alberta. In this capacity, Jim Jung is responsible for the processing of applications affecting the southern portion of the province. Before joining the Board in 1977 as a labour relations officer, he was employed in the personnel field.

Russell Albert - Senior Solicitor

Russ Albert has been Senior Solicitor for the Labour Relations Board and the Alberta Human Rights Commission since December 1986. In that capacity, he provides legal advice to the Board, appears on its behalf in court and conducts legal research into matters of law and policy with respect to labour relations. Before assuming this position, he spent eight years in private practice, specializing in employment law matters.

Les Wallace - Solicitor

Les Wallace joined the Board in April 1988 from the law firm of Reynolds, Mirth, Richards and Farmer. He articled with the Ontario Labour Relations Board and was employed as a contributing editor on labour law matters for Carswell Legal Publications. Les also serves as counsel to the Alberta Human Rights Commission.

How the Board Operates

The Labour Relations Board receives, investigates and decides applications for certification from trade unions as well as applications to vary or revoke certificates previously issued. It also conducts representation and proposal votes, and supervises strike and lockout votes. The Board resolves disputes about the operation of the Code or the collective bargaining process.

The Board can ensure, in matters before it, that the rights of individuals under the Code are protected and may be exercised without interference or coercion. Any party alleging violation of any provision of the Code may file a complaint which the Board will investigate and try to settle (Section 15(1)). If necessary, the Board will rule on the complaint.

The Board has the power to decide whether a strike or lockout in progress is unlawful and, if necessary, order that it cease. The Board can regulate picketing by ensuring that the restrictions imposed by the Code are enforced, and by balancing the interests of those engaged in lawful picketing activity and the interests of other parties affected by the picketing.

The Code gives the Board the authority to make many other determinations, such as whether a person is an employee or whether a collective agreement has been entered into (Section 11(2)). The Board has a general power to resolve differences about the application or operation of the Code under Section 15, but it will not use this power to resolve differences that are properly resolved by arbitration.

Is a Board hearing like a court trial?

Board hearings are less formal than court trials. The Board is often able to help the parties reach an agreement between themselves without having to make a ruling. Parties involved in a matter before the Board can use a lawyer or represent themselves.

As in a court case, evidence is usually given under oath, and witnesses may be cross-examined. Any affected party can call witnesses. However, the Board can ensure an employee's trade union choices are kept confidential. The Board is not strictly bound by the formal rules of evidence (Section 13(5)).

Hearings are usually held in the Board's hearing rooms in Edmonton or Calgary. However, the Board will sit in any location in the province if it is more convenient to the parties involved. Board panels sit regularly to hear uncontested and pre-hearing matters, with conference call and speaker phone facilities for the convenience of the parties.

Just as in a court of law, the Board's proceedings are open to the public, but only those directly affected by the matter, or their representatives, may participate.

Do all applications made to the Board require a hearing?

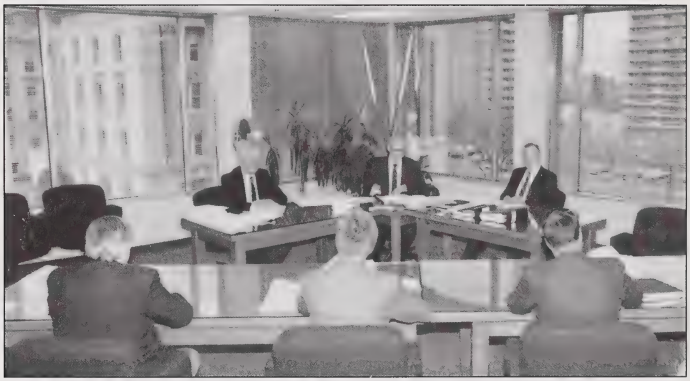
No. Board officers investigate and make recommendations in disputes, and will assist the parties in settling their differences before the matter has to be scheduled for a Board hearing. If this is unsuccessful, the Board may call a hearing during which the parties may call evidence and make oral or written submissions in support of their positions.

Hearings are usually held when the issue is a contentious one. The Board may decide not to hold a hearing if there have been no objections to an application from those affected. Similarly, some matters can be dealt with effectively by the use of written submissions. The Board has the power to reject applications at any time.

Decisions and Judicial Review

The Board's rulings are final and binding. All Board decisions can be filed in court if need be and, once filed, can be enforced as a court order.

The Board issues some decisions orally at the end of a hearing. In other cases, the Board reserves its decision and sends out a written decision later. The Board publishes its written decisions in the Alberta Labour Relations Board Reports.



While there is no appeal from Board decisions, the Court of Queen's Bench does have the power to review those decisions and set them aside if they exceed Board powers under the Code or involve an interpretation of the law that is obviously unreasonable. The Code allows a short (30-day) period after the decision is given for any court challenge to be launched (Section 18).

The Board also has the power to reconsider any of its own decisions. The circumstances in which the Board will do this are limited, and are explained in an information bulletin.

Trade Union Records

The Board maintains a registry of trade union constitutions as well as current lists of officers and persons authorized to sign collective agreements. To keep these records up to date, trade unions must file any changes as soon as possible after they are made (Section 22).

A trade union cannot make an application for certification until 60 days after it files its constitutional documents with the Board, unless the Board consents to a shorter waiting period (Section 35(1)).

What the Labour Relations Board Does Not Do

Does the Board deal with unpaid wages or employment standards?

No. Neither the Labour Relations Code nor the Labour Relations Board deals with employment standards legislation or unpaid wage claims. These issues are dealt with by the Employment Standards Code administered by the Employment Standards Branch of Alberta Labour. Its responsibilities include the regulation of hours of work, the payment of wages, vacation and general holiday pay, the termination of employment, parental benefits and the employment of young persons. The provisions of the Employment Standards Code apply to all employees, whether or not they are covered by a collective agreement. Inquiries about any of these areas and about collecting unpaid wages should be directed to the Employment Standards Branch.

Is going to the Board the same as going to arbitration?

No. The Labour Relations Board's role is to interpret and apply the Labour Relations Code, and to process the matters covered by the Code. A grievance

arbitrator will decide what a collective agreement means or whether it has been applied properly in particular circumstances. In interest arbitration, arbitrators decide what the terms of a new collective agreement should be. While the Labour Relations Board is a permanent board, each arbitration board is set up just to hear a specific case.

Does the Board appoint mediators?

No. Mediators are appointed by the Director of Mediation Services, a branch of Alberta Labour. The Board is not normally involved in collective bargaining unless there are complaints of unfair labour practices.

Although the Board doesn't appoint mediators, the Code gives officers and members of the Board a role in helping the parties resolve disputes about matters brought before the Board (Sections 10, 15).

Collective Bargaining

Collective Bargaining

The objective of collective bargaining is a collective agreement between the union and the employer. Once negotiated, this agreement governs wages and benefits for the employees it covers, for a fixed period or "term". This fixed-term collective agreement provides a period of labour peace. Strikes and lockouts are allowed only when a collective agreement has expired, and then only after the collective bargaining process has taken place.

There is a cycle to collective bargaining. Once bargaining has begun with a notice to bargain, several things must happen before a strike or lockout can take place. The parties must meet, exchange proposals and discuss their mutual concerns in detail. If they cannot reach a settlement on their own, they must try a period of bargaining with the help of a mediator. Once a mediator has issued a report, or decided not to issue a report, they must wait a 14-day "cooling-off period" before taking strike or lockout action.

Before strike or lockout action begins there must be a Board-supervised strike or lockout vote. A 72-hour notice is required before a legal strike or lockout can begin. This allows each side to make its final preparations, but more importantly, it allows last-minute negotiations to take place to resolve the dispute without industrial conflict.

The Code creates a special system to resolve disputes of hospital and firefighting employees. Strikes and lockouts are prohibited and compulsory arbitration is used to settle disputes if collective bargaining fails. There are similar rules for police, and special powers in the event of a public emergency.

The steps in the collective bargaining cycle are outlined below.

Notice to Bargain and Negotiations

Collective bargaining usually starts when one party serves the other party with written notice to bargain. If the union is newly certified and no agreement is in effect, the notice to bargain may be served at any time. If a collective agreement is in force, the notice to bargain must be served between 60 and 120 days before the existing collective agreement expires, unless the collective agreement specifies a longer period (Section 57(2)).

The notice must include a list of the names and addresses of the bargaining committee of the side issuing the notice. The other party must respond with a list of the names and addresses of its bargaining committee. Each committee must include at least one person from the trade union locals or the employers being represented (Section 59).

The union and the employer must meet and begin to bargain in good faith within 30 days after the notice is given. The objective of the bargaining is to amend an existing collective agreement or to reach a new one. They must exchange bargaining proposals within 15 days of this first meeting unless they agree on a longer period. Either party can require the other to tell them what ratification procedures are necessary for a collective agreement (Section 59(6) & (7)).

When bargaining has begun, the Code automatically extends the terms of a contract that would otherwise expire (referred to as bridging), so all of its terms and conditions apply while bargaining continues. This bridging continues until a legal strike or lockout takes place, until the bargaining rights are terminated, or until a new collective agreement is entered into.

While the Code extends a collective agreement during collective bargaining, that agreement terminates as soon as a lawful strike or lockout takes place. Except for rights and benefits that are partially protected by the Code (pensions and insurance benefits, for example,

have a limited protection), the terms and conditions of the collective agreement no longer apply once a strike or lockout begins (Section 128).

What can be done if one side refuses to meet or negotiate in good faith?

The Code requires the parties to meet with each other and to bargain in good faith. They must make every reasonable effort to enter into a collective agreement (Section 58). If one party feels the other is failing to meet or failing to bargain in good faith, that party may file a complaint with the Board. If it cannot be settled, the Board may hold a hearing, make a finding and, if necessary, issue directives or impose conditions to ensure that good faith bargaining resumes (Section 16 (1)).

The Board's powers concerning good faith bargaining only ensure the bargaining process is carried out properly. It is not the Board's job to settle the terms of the agreement itself; that is for the parties through collective bargaining. The Board's role is limited to ensuring the parties go about the task diligently and fairly.

Employers' Organizations

Employers often wish to join together to bargain collectively with a trade union. Sometimes, employers will voluntarily authorize a consultant or an employers' organization to bargain with a trade union as the employer's agent. The Code allows this procedure, in which the agent simply bargains for a collective agreement on behalf of several employers at once. An employer may withdraw from this informal process at any time to bargain on its own behalf.

A more formal procedure for group employer bargaining is found in Section 60 of the Code. An employers' organization may be authorized in writing by a number of employers to bargain on a group basis on

their behalf. Once employers commit themselves to group bargaining in this formal fashion, the employers' organization continues to represent them until the dispute is settled or a strike or lockout occurs. If a strike or lockout happens, they are free to withdraw from the group if they wish. The employers' organization must give the union a list of all employers in a Section 60 bargaining group within 10 days of the service of any notice to begin collective bargaining. No additional employers can be added to the list later without the union's consent.

Mediation

At any time during collective bargaining the parties may ask the Director of Mediation Services to assign a mediator to informally assist them (Section 62). In every case, if the parties in collective bargaining cannot come to an agreement, a mediator will be appointed to help settle the dispute. The Director of Mediation Services will appoint a mediator at the request of either or both parties to the dispute, or at the direction of the Minister of Labour. The mediator's function is to hear both sides of a dispute and encourage and assist the parties to reach a settlement (Sections 63).

No strike or lockout is permitted until at least 14 days of formal mediation have taken place and a further 14-day cooling-off period has passed. Once formal mediation begins, the mediator will meet with the parties and try to encourage a settlement. The mediator has the choice of telling the parties that a report will not be issued, or of issuing a report recommending terms of settlement which the parties may then accept or reject.

The recommendation binds the parties if both accept it. If either the union or the employer accepts the mediator's recommendations, it can apply to have the Labour Relations Board conduct a vote of the side that rejected the offer. Individual employees, or in the case of an employers' organization, the individual employers, vote by secret ballot.

A recommendation accepted during this vote forms the new collective agreement. If the vote fails, the union and the employer must then decide on their next step. They can continue negotiations, they can consider strike or lockout action, or, if they both agree, they can submit the dispute to voluntary interest arbitration. There must be a 14-day cooling-off period after a vote on a mediator's report before a strike or lockout vote can be conducted (Section 63).

Strike and Lockout Votes and Notices

Following the mediation process and cooling-off period, if no new collective agreement has been reached, the parties have the option of taking strike or lockout action to apply pressure on the opposing party to reach a settlement. In order to call a strike, a trade union must apply to the Labour Relations Board to have the Board supervise a strike vote. Similarly, an employer or employers' organization wishing to lock out its employees must apply to the Board for a supervised lockout vote or for an employer poll, in the case of a single employer.

The object of a strike vote is to determine, in a democratic manner, whether a majority of the employees is prepared to strike. The object of a lockout vote is to determine whether an employer, or a majority of the employers represented by the employers' organization, is prepared to lock out its employees. The Board has voting rules and an information bulletin setting out its role in the supervision of strike and lockout votes.

The Labour Relations Code provides that a strike or lockout vote remains valid only for 120 days (Section 75). This ensures that strikes and lockouts do not take place too long after the employers or employees affected have had a chance to express their views.

When an application to supervise a strike or lockout vote is received, the Board appoints a supervising officer

who may meet with the parties to set up the voting procedures, may attend during the vote and be present at the counting of the ballots. The Board's role is supervisory. The vote is actually conducted by the party requesting the vote.

The final step before a strike or lockout can take place is giving notice of the time, date and initial location of the intended action. To be effective, the notice must be properly served on the other party at least 72 hours in advance of the proposed strike or lockout action (Section 76). The notice must also be served on the mediator in the dispute.

The purpose of the notice is to give the other side advance warning of the strike or lockout action. It also gives an opportunity to try to find a settlement before strike or lockout action begins.

What happens if, after notice is given, a strike or lockout does not occur?

If a strike or lockout does not begin on the date set out on the notice, a new 72-hour notice must be given to the other party involved. A copy must also be given to the mediator. The new notice must state the new time and place of the proposed strike or lockout (Section 78). However, if both sides agree in writing to do so, they may amend the time, date or place set out in a notice that has been served, eliminating the need for a new notice. This often happens while last-minute bargaining is attempted.

Strikes and Lockouts

The Code sets out the times when a lawful strike and lockout can take place. All other strikes and lockouts are prohibited. Many of the provisions that protect employees and employers during a lawful strike or lockout do not apply if the strike or lockout is prohibited. The Code gives the Board powers to order that prohibited strikes and lockouts cease and to exercise

those powers very quickly (Sections 84-86). The Code also allows the courts to impose heavy penalties for participation in prohibited strikes and lockouts.

When can a legal strike occur?

A strike can legally take place only if the following requirements are met:

- No collective agreement is in force;
- A majority of employees has voted in favour of a strike in a vote supervised by the Labour Relations Board;
- A declaration of the result of the strike vote has been filed with the Board (Sections 88-89);
- No more than 120 days have passed since the strike vote was taken; and
- The trade union has served strike notice personally on the employer or the employers' organization, giving at least 72 hours notice of the date and time the strike will begin and has also notified the mediator (Section 76).

When can a legal lockout occur?

A legal lockout can take place only if the following requirements are met:

- No collective agreement is in force;
- When an employers' organization is representing a number of employers, a majority of the employers has voted in favour of a lockout vote in a vote supervised by the Labour Relations Board;
- When the dispute involves a single employer, a poll of the employer is in favour of a lockout;
- The employer has filed the results of any lockout vote with the Board;

- No more than 120 days have passed since the lockout vote or poll was taken;

- The union or its representative has been personally served with 72 hours written notice of the date and time the lockout will begin; and

- the mediator has been notified (Sections 72,76).

Is a striking or locked-out employee still considered an employee?

Yes. Although an employee on strike or locked out is not working and not entitled to pay, he or she is still considered an employee (Section 1(2)) and cannot be terminated simply because of being on strike or locked out (Section 87).

The Labour Relations Code has protection for employees on lawful strike or locked out (Section 88). When the strike or lockout ends they are entitled to ask to resume their employment. They are entitled to be reinstated in preference to any employee hired as a replacement during the dispute. An employee must ask for this reinstatement as soon as the strike or lockout is over. The Code provides that a dispute ends with a settlement, the termination of bargaining rights or as soon as two years have passed since the strike or lockout began.

This reinstatement provision does not mean all employees will be automatically recalled as soon as a strike or lockout is over. For example, markets may be lost, causing reduced production requirements. There is particular protection in the Code for pension rights and benefits (Section 153). There is also protection for medical, dental, disability, life and other insurance schemes. However, it is up to the trade union representing employees to take steps to ensure payment of the full premiums of the insurance schemes it seeks to protect.

When is a strike or lockout prohibited?

In general, a strike or lockout is prohibited if it occurs before the steps set out above have been taken, or if it occurs when a collective agreement is in force.

A strike or lockout is also prohibited if it involves hospital employees, firefighters or police. These employees are covered by special legislation which prohibits strikes or lockouts. If the Cabinet declares a particular dispute to be a public emergency, it becomes unlawful to continue or begin any strike or lockout covered by the order.

The Labour Relations Code also gives the Board the power to restrict activities likely to cause or continue an unlawful strike (Section 84). Threatening an unlawful strike or doing something likely to lead others to engage in an unlawful strike can lead to a Board order directed to the trade union, its officers and members as well as the employees or persons involved. Similar provisions exist to restrict activities likely to cause an unlawful lockout (Section 85).

What are the consequences of an unlawful strike or lockout?

Any party alleging an unlawful strike or lockout can ask the Board to hold a hearing on short notice. If the strike or lockout is unlawful, the Board will order that it be stopped. It may also make other remedial orders (Section 16). Such an order, once given, applies to the strike or lockout referred to in the Board's order and any future strike or lockout that occurs for the same reason.

A Board order may be filed by the Board with the Clerk of the Court and is then enforceable as a judgement of the Court of Queen's Bench. It is contempt of court to knowingly violate a court order. With the consent of the Minister of Labour, a party can also be prosecuted directly for violating an order of the Board (Section 160).

Picketing

The Labour Relations Code allows picketing to occur during a lawful strike or lockout. The picketing is restricted to the employee's place of employment. Alberta does not allow "secondary picketing" which is picketing somewhere other than the place of employment (Section 82(4), 83).

Picketing must be peaceful and carried out without trespassing or other unlawful acts. Violent or unlawful acts can involve legal consequences and may affect the employees' continued employment.

The Labour Relations Board is primarily responsible for regulating picketing activities during a strike or lockout. Picketing that has become unlawful may be limited by a Labour Relations Board cease-and-desist order. When an application is made to the Board to regulate picketing, the Board considers and balances the right to peaceful free expression of opinion, the directness of the interests of persons participating, any likelihood of violence and any undesirable escalation of the conflict or dispute (Section 82(3)).

Other Methods of Resolving Disputes

The Labour Relations Code sets up a number of ways to resolve disputes without going to strike or lockout. These include proposal votes, voluntary arbitration and setting up a disputes inquiry board. At any time after the first exchange of bargaining proposals (but only once during the course of the dispute), the employer may have the Board take a proposal to the employees affected by the dispute for a secret ballot vote to determine if the proposal is acceptable. If the employees vote to accept the offer, it becomes the basis of a new collective agreement (Section 66).

Similarly, a trade union can ask once during the course of the dispute to have the employer or members of an employers' organization polled by the Board, and if the union's offer is accepted, it becomes the basis of a new collective agreement.

If both parties agree, a dispute can be submitted to voluntary binding arbitration. Agreement in writing is required. One side cannot submit a dispute to arbitration without the consent of the other side. The Minister of Labour can be asked to make the necessary appointments if the parties cannot agree on who should hear the dispute. There can be a one- or three-person arbitration board. The arbitration board will hold a hearing about the dispute, listen to submissions, and then decide on terms and conditions for a collective agreement that will bind both parties (Sections 91-93).

The Minister of Labour has the option to appoint one or more persons to attempt to settle a dispute before or after a strike or lockout begins. This is known as a disputes inquiry board (DIB). Only one such board can be appointed for a dispute, although that board can also be asked to handle any disputes of a similar nature (Section 103).

A disputes inquiry board may determine its own procedure and try to bring about a settlement. If unable to mediate an agreement, the DIB will make

recommendations on each item in dispute. This list of recommendations may be published (i.e. made public) by the Minister of Labour. These recommendations are not binding, unless they are accepted by both parties. If so, they are included in the terms of a collective agreement.

If an employer, employers' organization or a union does not accept a DIB's recommendations within 10 days after receiving the report from the Minister, the Labour Relations Board must conduct a vote among the employers or employees involved. The purpose of the vote is to find out whether those employers or employees affected by the dispute are willing to accept the recommendations. If both sides vote to accept the DIB recommendations, they become binding and form the basis of a collective agreement. If either side still rejects the recommendations, the work of the DIB is concluded and the parties continue their dispute until they negotiate a settlement themselves (Section 105).

The New Collective Agreement

Once parties achieve a collective agreement it becomes binding on all the persons affected, whether they are employers, trade unions or employees. Usually the agreement will result from direct negotiations. However, an agreement arrived at through arbitration or through an accepted proposal, mediation or DIB vote is equally binding.

Every collective agreement should have a fixed expiry date. This is important because it influences when applications can be made for termination of bargaining rights or for certification of another union. It also determines when notice to bargain can be given. If an agreement is signed without a fixed term, the Code says the agreement is for one year (Section 127).

Collective agreements may have an automatic renewal clause. Parties will sometimes agree that if no notice to bargain is given in the period for giving notice, the contract will be automatically renewed, usually for a

further year. Such clauses are not required by the Code. Such automatic renewal provisions are different from bridging clauses. A bridging clause only extends the terms of the collective agreement during the bargaining period until a strike or lockout occurs.

Essential Service Disputes

The Labour Relations Code has special rules to resolve disputes in certain essential services. These parties must submit unresolved bargaining disputes to a form of binding arbitration that replaces the option to strike or to lockout. These no-strike-or-lockout rules always apply to hospital employees and firefighters. A similar system applies to police under The Police Officers Collective Bargaining Act.

In addition, these rules apply when the Cabinet declares a dispute to be a public emergency. For this to be done, the dispute must be causing or have the potential to cause an emergency, including a threat to public health or to property (by stopping sewage or water treatment or reducing or stopping health services, for example). Once this power is used, a dispute that might otherwise involve a legal strike or lockout changes. Any work stoppage must end, and the issues in dispute be resolved by a form of arbitration called a public emergency tribunal (Sections 110, 111).

How are disputes settled when the employees are not allowed to strike?

When a mediator is appointed to a dispute involving employees prohibited from striking (Section 94 (1)), the mediator will help the parties attempt to settle the items in dispute. If the parties do not settle within 14 days of the mediator's appointment, the mediator will forward a list of all items in dispute to the Minister. The Minister may appoint a compulsory arbitration board or may order the parties to return to collective bargaining (Section 96).

A compulsory arbitration board decides the matters that will form a collective agreement which is binding on both the employer and the union. Police arbitrations and public emergency tribunals act in a similar way.

The Code requires that a compulsory arbitration board consider certain criteria to help it establish wages and benefits that are fair and reasonable to the employees and the employer and are in the best interests of the public (Section 99).

What happens if a strike or lockout takes place in the hospital or firefighting industry or following a public emergency declaration?

The Labour Relations Code establishes some additional remedies that can be applied in the event of an unlawful strike or lockout in these cases. The Board can impose financial penalties on the offending party when either firefighters or hospital workers are involved or when the strike or lockout is creating a public emergency. In the case of a prohibited strike of this type, the Board may stop the union from receiving the dues and fees it normally receives from the employees. It does this by directing the employer to stop these deductions for a period of one to six months. In the case of an illegal lockout of this type, the Board may direct the employer to pay the union dues normally payable by the individual employees, also for a period of one to six months (Section 112-113).

As a further option the Code gives the Lieutenant-Governor in Council (the Cabinet) the power to revoke a trade union's certification or prohibit an employers' organization from continuing to represent employers. This power applies only to public emergencies, and hospital and firefighter disputes and only where the union or employers' organization has caused or participated in the prohibited strike or lockout.

Trade Union Bargaining Rights

Trade Union Bargaining Rights

This section of the guide describes how a trade union gets the right to bargain with an employer on behalf of employees. A trade union is an organization of employees formed with the objective of representing employees in bargaining. For practical and legal reasons a trade union needs the support of the employees it seeks to represent.

While an employer can voluntarily bargain with a trade union for a group of employees (called a bargaining unit), the employer may be unwilling to do so. The Labour Relations Code allows a trade union that believes it has the employees' support to apply to the Board for bargaining rights. This is called an application for certification. The union's support is decided on a majority rule basis in a secret ballot vote conducted by the Labour Relations Board.

Once certified, a trade union can require the employer to negotiate in good faith for the purpose of reaching a collective agreement.

Bargaining rights, once granted, can vary with time. The circumstances of employment may change as the employer's business grows or changes. The business may be sold or disposed of in some other way. The Code allows the modification of bargaining rights to fit these changes, but it also protects the employees from any effort by an employer to avoid collective bargaining responsibilities.

Employees, having selected a trade union, are free to change their minds. The Code allows periodic opportunities for employees to cancel a trade union's bargaining rights or to select a different trade union to represent them.

Trade Unions

Organizations that enter into collective bargaining on behalf of employees are known as trade unions. Trade unions represent a specific group of employees in negotiations with the employer and otherwise act on the employees' behalf. A trade union may be a local of a provincial, national or international union or it may be an independent organization that represents the employees of only one plant or business.

To form a trade union, a number of employees agreeing to work as a group draft a constitution and bylaws, sign up members and elect officers. More commonly, employees wishing to be unionized will contact an existing trade union and apply to become a chartered local of that union, or join an existing local union.

Before a trade union can apply to be certified, it must file its constitutional documents and list of officers with the Labour Relations Board. This information must be updated whenever changes occur. It is possible for two or more trade unions to make a joint application for certification (Section 34).

Certification

A trade union may apply to the Board to be certified for a unit of employees it believes is appropriate for collective bargaining. The application is made by completing and filing a form supplied by the Board along with proof that the union has the support of 40 per cent of the employees in the bargaining unit it is applying to represent (Section 30-31).

The Code requires the Board to investigate five aspects of the application before granting a certificate. These are:

- Trade union status;

- Timeliness of the application;

- The appropriateness of the bargaining unit;

- Initial 40 per cent support followed by majority support in a secret ballot vote; and

- Bars to certification based on picketing or management influence.

The Board must conduct its investigation as quickly as possible (Section 32(3)). The representation vote cannot be held until the Board is satisfied that the trade union has proved it has the necessary initial 40 per cent employee support.

When is a certification application timely?

The Code places several restrictions on when an application can be made.

The union must have had its constitution or bylaws on file with the Board for at least 60 days (Section 22). This period may be reduced by the Board but this must be done before the certification application is filed.

Several limitations serve to protect bargaining rights held by other trade unions. This protection for an incumbent trade union is limited. A certification application can still be made if it is filed during what are referred to as "window periods":

- When 10 months have passed after certification, if a collective agreement has not been reached;

- When 10 months have passed after the courts have upheld a disputed certification, if a collective agreement has not been reached;

- Within two months of the end of the term of a collective agreement of two years or less; or

- When an agreement is for a term of more than two years, within the 11th or 12th month of the second or any subsequent year of the term, or within the two months before the end of the term (Section 35(2)).

Some other timeliness restrictions apply:

If the union previously lost or withdrew a certification application for the unit, it must wait 90 days from the time of the previous application or get the Board's consent before reapplying (Section 55).

If it has been decertified for that unit, it must wait six months before reapplying (Section 52(2)).

During a strike or lockout, a trade union needs permission from the Labour Relations Board to apply for certification (Section 35(1)).

What is an appropriate bargaining unit?

The Board can only certify a group of employees (a bargaining unit) if the employees fit together in a group that is suitable for collective bargaining. The Board must decide whether the employees are likely to share the same concerns. In deciding this the Board will look at the kind of work the various employees do, their training and skill, their geographical location and similar factors. It will also look at the makeup of the employer's business and try to ensure that the bargaining unit is a viable one in that environment. In some cases, a unit made up of all employees in a certain workplace is appropriate; in others, only part of an employer's workforce may be appropriate as a bargaining unit.

When a trade union makes an application it must specify the bargaining unit it wants to represent. The Labour Relations Board will test the initial 40 per cent support on the basis of this unit. If the Board finds this unit to be inappropriate for collective bargaining, it may vary the unit to one that is appropriate. This change can be made only if there is an appropriate unit reasonably similar to the one applied for. The representation vote involves the employees in the unit the Board finds appropriate.

How does a union prove it has the 40 per cent support necessary to start an application?

A union must demonstrate that, on the day the application is received by the Board, 40 per cent of the employees in the bargaining unit applied for are, or have applied to be, members in the union, or have signed a petition to show their support. Those who later change their minds, for or against the union, and those hired after that date do not affect this initial count.

If the union is relying on applications for membership or a petition, these must have been made not more than 90 days before the certification application is filed with the Board. Applicants for membership must each have paid at least $2 on their own behalf to the union with their application (Section 31(a)).

A union may prove its support by a combination of membership in good standing and applications for membership. Alternatively it can prove its support through a petition. However, petition evidence and membership evidence cannot be mixed. When a union submits its evidence, the Board requires a union official to certify its authenticity.

Will the employer receive information about individual employees?

No. The privacy of employees is protected. The report that goes to the Board contains information about which individuals in the bargaining unit have joined the union, applied for membership or signed petitions. This information is deleted from the copies sent to the affected parties. The Board is not required to divulge this confidential information about a person's union affiliation (Section 13(6)).

How is an application for certification investigated?

When the Board receives an application for certification, it notifies the employer and any other parties with a legitimate interest in the matter. The

employer is required to post a notice at the workplace telling the employees that an application for certification has been made. The notice also informs anyone who objects to the application that they may contact the Board. A Board officer is assigned to investigate the application.

From the date an application for certification is received by the Board, the employer may not alter the terms and conditions of employment unless the change is in accordance with established practice or unless the trade union gives its consent. This restriction continues until 30 days after the certificate is granted, or if it is refused, until the date of the refusal (Section 145).

As quickly as possible, the Board's investigating officer gathers information about the application, and prepares a report. Specifically, the officer investigates both trade union and employer records to determine whether three key conditions of certification are met:

- The applicant is a trade union;

- That the unit of employees for which the trade union is applying or a reasonably similar unit is appropriate for collective bargaining; and

- The union's evidence demonstrates 40 per cent support for the trade union among the employees in the unit applied for.

When the officer's report is completed, copies are sent to the employer, the applicant trade union and to other affected parties. Any of them may object to the report or to the application for certification. The matter then goes before a Board panel that decides on any objections and whether or not to conduct a representation vote.

If the application satisfies the Code's requirements, the Board will conduct a representation vote to determine if a majority of employees in the bargaining unit favours certification. A notice of vote will be posted, setting out the type of employee eligible to vote. Anyone who feels entitled to vote may approach the returning

officer while the polls are open. The officer will decide if that person is eligible or not (subject to final determination by the Board). A scrutineer from each of the parties is allowed during the vote and the count. The vote is by secret ballot, and the majority of those employees who actually vote determines the outcome of the vote.

Once it has been certified, a trade union can require the employer to meet and bargain in good faith for a collective agreement (Section 57). The certified union becomes the only body with lawful authority to bargain for the employees in the specified bargaining unit. No other union may seek to bargain for those employees, and the employer may not negotiate with any other union once a union is certified (Sections 38(1), 147(3) and 149(a)(b)).

Can an employer object to a certification application?

Yes, employers are entitled to object to applications for certification by their employees. The Board will notify the employer as soon as the application is received. The employer and the union will each receive the officer's report as soon as it is prepared and will be given an opportunity to present any objections to the contents of that report. The employer should state clearly what is being objected to, explaining, for example, why a proposed bargaining unit is inappropriate, or in what respect the evidence of majority support is defective. Employers, however, are not allowed to interfere with the employees' freedom to select a union.

Can an employee object to a certification application?

Yes. Employees can object individually or as a group by appointing a spokesperson to appear on their behalf. They should contact the Board officer and be prepared to appear at the certification hearing. The Board does not attach substantial weight to employee opposition inappropriately generated by an employer. Employees opposed to the application can vote to reject the union when the representation vote is held.

What options do employees have in a representation vote?

If no trade union represents the bargaining unit, the employees may decide whether they do or do not wish the applicant trade union to represent them.

When the certification vote involves a trade union that is seeking to represent a group of employees already represented by a different trade union, the vote will determine if the employees choose the new union. If the new union is certified, the old trade union ceases to be the bargaining agent for that unit. If the new one is not chosen, the old union remains as the bargaining agent.

Can there be electioneering?

Votes are usually held at the workplace. There is usually no restriction on off-site electioneering, in the form of meetings at other locations or mailings to employees' residences, for example. However, the Board does not allow electioneering at the voting place while the vote is being conducted. Any special restrictions will be posted with the Board's notice of vote. However, if electioneering is threatening or intimidating, or involves promises or undue influence, it may amount to a prohibited practice.

Who conducts the vote?

The Board appoints a returning officer to conduct the vote. Affected parties are each entitled to have a scrutineer at each polling station. The returning officer makes sure that anyone casting a vote is entitled to do so. Normally, at the conclusion of the vote, the returning officer will count the ballots in the presence of the scrutineers.

Disputes about whether or not an individual can vote can usually be decided on the spot by the returning officer. If the dispute cannot be resolved, the ballot is

sealed separately and the ballot box is sealed at the conclusion of the vote. A Board hearing may then be scheduled to deal with the matter.

Any dispute about the way the vote has been conducted will be resolved by the Board.

Voluntary Recognition

A trade union seeking to represent employees of an employer has the right to apply for certification, but such an application is not compulsory. The trade union may approach the employer directly and ask the employer to voluntarily recognize the union by agreeing to bargain with the union. The employer and the trade union can then negotiate a collective agreement that will define the group of employees it will cover. Voluntary recognition of this type is particularly common in the construction industry.

Ordinarily, once a collective agreement is voluntarily negotiated, toward the end of the agreement's term one party will give the other a notice to bargain and a new agreement will be negotiated following the usual bargaining cycle. However, if the union is not certified, the employer is allowed to give notice that it does not intend to bargain with the union for a renewed collective agreement (Section 41). This notice must be given at least six months before the expiry of the collective agreement. Unless such notice is given, the employer will be obliged to bargain with the union for a new contract once the usual notice to bargain is given. The requirement for at least six months' notice of cancellation of voluntary recognition allows the question of union representation to be resolved before the bargaining cycle is due to begin. The union is then given the opportunity to apply for certification to confirm the union's right to bargain for an appropriate unit of employees. The Board processes such applications for certification in the usual way with a representation vote of the affected employees.

The Code contains a similar provision that allows a union to confirm its bargaining rights for groups of employees who have been voluntarily added to an existing but smaller bargaining unit (Section 42). The requirement for at least a six-month notice of cancellation of voluntary recognition allows the question of union representation to be resolved before the bargaining cycle is due to begin.

Modification of Bargaining Rights

Certifications initially apply to a specified union and employer. The Code recognizes that changes may occur in the structure of companies and of trade unions, and that bargaining rights and obligations sometimes have to be modified to reflect these changes. The Board has a general power to reconsider and vary its certificates (Section 11(4)). The Code also contains specific sections dealing with some of the more common changes.

What happens if a business is sold or disposed of?

If a business is sold, leased or transferred to another employer, the trade union's bargaining rights do not automatically cease; they may continue to bind the successor employer. On application by an employer or trade union affected, the Board will look into the circumstances of the transaction to determine whether any existing certification or collective agreement remains in effect and is binding on the new employer (Section 44).

Where a business is sold or merged with a business that already has a collective bargaining relationship with a trade union, any person or union affected can apply to the Board to determine:

- The unit of employees appropriate for collective bargaining;

-Which trade union, if any, should represent them;

-Which collective agreement, if any, should remain in effect;

-And which certificate or amended certificate continues to apply (Section 44(2)).

What happens if a government body changes its structure?

As with private sector employers, the Code allows the Board to decide whether the new governing body of a municipality, hospital or similar institution acquires the bargaining obligations of its predecessor. This allows the Board to resolve any questions about whether any certificates or collective agreements will continue, or be modified, to suit the new circumstances (Section 46).

Common Employer Declarations - Spin-offs

The Board may declare two or more business entities to be a common employer for the purposes of the Code. This can be done when, in the Board's opinion, related activities are being carried out under common control or direction through more than one business entity (Sections 45, 190).

These provisions are aimed, in part, at the preservation of bargaining rights. Corporations may reorganize their affairs for tax, management or similar reasons without disrupting the labour relations of the business. The Board is also allowed to intervene where an employer attempts to divert business through a related company to avoid collective bargaining obligations or agreements.

Making a common employer declaration is discretionary unless the Board is satisfied that the reason for the use of the two or more entities is to avoid a collective bargaining relationship. The Board does not use the section as an indirect method of certifying employees or to create units that are inappropriate for collective bargaining.

Union Successorships

If a trade union merges with another trade union, the successor union may acquire the bargaining rights, privileges and duties of the previous union. Any person or union can apply to the Board for a declaration confirming this. Before this declaration is made, the Board will investigate the circumstances of the transaction to make sure the new trade union is indeed the true successor to the old one. When the Board is satisfied that the new union has properly taken over from the old union, it declares that the collective agreement and certification apply to the new trade union (Section 47). If a trade union simply changes its name, the Board will usually just reconsider the certificate and make the change using its powers under Section 11(4)).

Revocation of Bargaining Rights

Employees who are dissatisfied with the trade union that represents them can have that union's bargaining rights revoked. They may then bargain individually with the employer or select a different union. Employees may apply for revocation whether the union's bargaining rights arise from certification or from voluntary recognition by the employer.

The employees submit a petition to the Board expressing their wishes and giving the name of the employer and of the trade union, and the names and signatures of those employees who want to have the union's bargaining rights revoked. The Board keeps the identity of the petitioning employees confidential. Before a vote can be held, the Labour Relations Board must be satisfied that 40 per cent of employees in the bargaining unit support the application to make the change.

An application for revocation, like an application for certification, can be made only during those periods when the union's bargaining rights are not protected (that is, during the window periods described in the

preceding section on certification). The Board's consent is needed to make an application during a strike or lockout (Section 50(1)).

If the employee petition is in order, the Board will conduct a representation vote. A majority of those voting must vote for the change before the Board will revoke the bargaining rights of the trade union (Section 56(1)).

If the Board grants revocation, any collective agreement that had been in force is no longer binding on any of the parties. The employer and the individual employees are then left to negotiate or amend terms of employment with each other directly. The union affected by the revocation may not apply to be recertified or enter into a collective agreement for that bargaining unit for six months from the date of revocation (Section 52(2)).

How can employees change trade unions?

The employees may join another trade union which can then apply for certification. It is not necessary to have the bargaining rights of the first union revoked; if and when the second union is certified, the first union automatically loses its right to represent the employees. The new union may apply for certification only when the old union's bargaining rights are unprotected (that is, during the window periods as described in the previous section on certification).

If a collective agreement was in force at the time of the change, the newly certified trade union becomes a party to it, but may terminate that agreement by giving two months' written notice (Section 38(3)).

Can an employer apply to revoke a trade union's certification?

Yes, but only when there is no collective agreement and there has been no collective bargaining with the union for three years after certification, or if there has been no collective bargaining for three years after the collective agreement has expired (Section 50(5)).

The Collective Agreement in Operation

The Collective Agreement in Operation

A collective agreement is a written agreement between a trade union and an employer. It is a contract setting out the terms and conditions of employment for each employee covered by the agreement. It is binding on all employees covered, whether or not they are members of the union.

The parties can put a wide variety of provisions in a collective agreement, in fact anything the parties agree upon relating to terms and conditions of employment. For example, provisions may deal with wages, vacations, hours of work, seniority and promotions, lay-offs and recall or benefit plans. An important provision contained in most collective agreements relates to the employee's relationship to the union, usually called a union security clause.

All collective agreements need a grievance and arbitration provision that allows disputes about the meaning and operation of the agreement to be settled without a work stoppage. A union is not required to arbitrate all grievances; many are settled through discussion. However, a union has a duty to represent employees fairly in matters arising out of the collective agreement.

Union Security

The trade union and the employer often agree to include one of several approaches to union membership in the collective agreement. These provisions, if agreed upon, determine the extent of the employees' obligation to belong to or pay dues to the trade union.

The names given to the five common types of union security arrangements, and the obligations they involve are:

- The union shop

All current and future employees must join the trade union within a specified time after they are hired, and must remain as members in good standing as a condition of continued employment. Dues must be paid to the union.

- The closed shop

A person must be a member of the union before being hired by the employer, and must remain a member in good standing as a condition of employment. Dues must be paid to the union.

- The agency shop - the "Rand formula"

This clause does not require employees to join the trade union but non-members must pay the union an amount equal to the dues paid by members. The agency shop arrangement is commonly called the Rand formula.

- Maintenance of membership

New employees need not join the union, but those who are already members must maintain their membership and pay dues as a condition of continued employment.

- Dues Checkoff

The Labour Relations Code provides for the compulsory deduction of union dues by the employer upon receipt of written authorization from the employee. This written authorization must be complied with, whether or not the union is certified or whether or not a collective agreement is in force (Section 25).

If an employee, by reason of religious conviction or religious belief, objects to joining a trade union or to paying dues to the union, the Board may release the employee from that obligation. In such cases, instead of paying dues or other fees to the union, the employee is required to pay the same amount of money to a registered charitable organization (Section 27 (2)).

Grievance Arbitration

Collective agreements must have a provision setting out how disputes over the meaning or application of the agreement are resolved. The method is usually a grievance procedure followed by a form of arbitration called "grievance" or "rights" arbitration. This process for resolving disputes is used when issues arise during the course of a collective agreement over the meaning of, or an alleged violation of, the collective agreement.

Arbitrators deal with several types of cases. Sometimes they deal with cases involving just one or a few individuals, such as discharge and discipline cases. At other times they will deal with cases involving many employees, such as a dispute over overtime or benefit payments. Sometimes the arbitrator will simply interpret the collective agreement because the union and the employer disagree on its meaning, or whether it applies in a given situation.

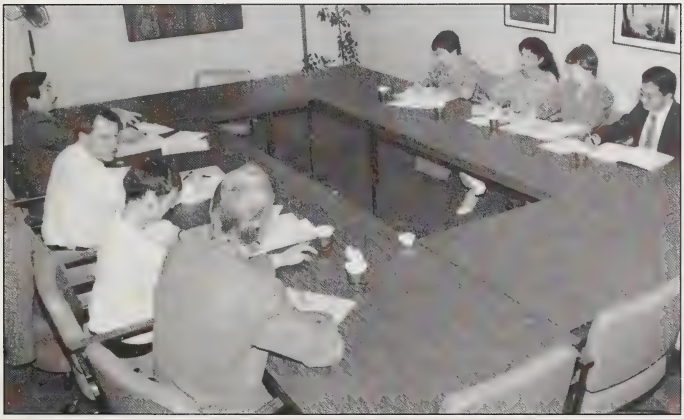
Disputes covered by arbitration usually have to be processed through the grievance and arbitration process rather than through the courts. This is particularly important for employees who feel wrongfully dismissed since their remedy is to proceed with a grievance rather than a court action for wrongful dismissal. There is often a very short period in which to file such a grievance.

Most collective agreements include a grievance procedure consisting of three or four stages, with more senior persons from both union and management attempting to resolve the problem at each stage. If a solution cannot be found, the problem may then go to arbitration.

If an agreement does not contain a grievance and arbitration procedure, the parties are required to follow the model collective agreement arbitration procedure set out in Section 134 of the Labour Relations Code.

How long does grievance arbitration take?

Unions and employers, through collective bargaining, are free to choose the system of arbitration that best suits their needs. Some systems take longer than others. If speed is important the parties should try to select arbitrators with time available to render a decision within a reasonable period. If the process is unreasonably delayed the Labour Relations Board has the power to speed up the process (Section 138).



Do the parties have to accept a grievance arbitration decision?

Yes, the arbitrator or arbitration board's decision is final and binding on all parties involved. If it is not complied with, the decision (called an award) can be filed in the Court of Queen's Bench and enforced as a court order.

An arbitration award cannot be appealed directly, but the court can conduct a limited review and set aside any award made beyond the arbitrator's powers, or that involves unreasonable errors of law. Any such application for review must be filed in court within 30 days of the date the award was issued (Section 143).

The Union's Duty of Fair Representation

The Code, recognizing that the union has considerable authority and control over the processing of grievances, requires that unions represent employees fairly with respect to their rights under the collective agreement (Section 151).

This "duty of fair representation" requires the union to exercise its discretion in good faith, after studying the grievance and assessing its merits honestly and objectively. The union should take into account the significance of the grievance and its consequences for the employee on the one hand, and the legitimate interests of the union on the other. Making a mistake in the process, however, does not automatically make the union liable for the employee's loss. Employees must take reasonable steps to protect their interests. Employees should carefully check the collective agreement to see exactly what rights it gives them.

While the union usually has the discretion to settle or refuse to pursue a grievance, it commits a prohibited practice if it abandons a grievance in a manner that amounts to unfair representation. The union is protected from financial liability for fair representation claims where it has acted in good faith in respect of the employee. The union is also protected where the loss was the result of the employee's own conduct (Section 151(2)).

Occasionally an employee's chance to file a grievance is lost by a union's failure to represent the employee. The Code gives the Board a limited power to extend collective agreement time limits. This can only be done in cases involving loss of a job or of a substantial amount of work. There must be reasonable grounds for making the extension and steps must be taken so that the employer will not be substantially prejudiced by the extension. This may involve an order that the union compensate the employer for losses suffered as a result of the union's failure.

Can an employee appeal the union's decision about a grievance?

An employee dissatisfied with the way a union has dealt with a grievance has three avenues to explore. First, the union's constitution or bylaws may provide an internal appeal procedure. Second, employees should check the collective agreement to see if, and to what extent, they can pursue grievances on their own behalf. Third, employees have the option of filing a complaint with the Labour Relations Board alleging unfair representation by the trade union (Section 151).

The complaint procedure involves a review of the conduct of the union. It is not an appeal of the union's decision or a hearing on the merits of the grievance. The Board will not interfere with a union's decision simply because the affected employee disagrees.

Unfair Labour Practices

Unfair Labour Practices

The Labour Relations Code guarantees employers, employees and trade unions the right to free collective bargaining and establishes a system to make collective bargaining work. To protect these rights, and keep the system functioning fairly, the Code prohibits certain types of unacceptable conduct.

Complaints that the Code has been breached can be filed with the Labour Relations Board by any affected party. A complaint can be based on the breach of any provision in the Code or the violation of any prohibited practice. The Board refers to such complaints as "unfair labour practice complaints". Often the name "prohibited practice" and "unfair labour practice" are used interchangeably. They mean basically the same thing; one party is complaining to the Board that another party has breached a provision in the Code. Such complaints may involve trade unions, employers, employers' organizations, employees or persons acting on their behalf.

Freeze Periods

There are certain sensitive times during the certification and bargaining cycle when the Code prohibits changes in rates of pay and terms and conditions of employment. The first freeze period lasts from the day an application for certification is filed until it is refused, or until 30 days after it is granted. The only exception to this restriction is when the change is based on established practice, on a collective agreement or when the employer has the union's consent (Section 145). A further 60-day freeze is imposed if a notice to bargain is served in respect of a newly certified employer within 30 days of the certification (Section 145).

The Code also imposes a freeze period once a notice to bargain is served at the end of a collective agreement. Like the "bridging provision" that extends

the collective agreement, this freeze prevents changes during the negotiations. It ends once an agreement is reached, the bargaining rights are terminated, or a strike or lockout occurs.

Giving Evidence

The Code prohibits the practice of taking discriminatory or retaliatory action against people who have testified at a Board hearing, filed a complaint, made an application under the Code or otherwise taken part in the proceedings provided for in the Code. This prohibition applies to employers and trade unions, as well as to people acting on their behalf (Section 20).

Internal Trade Union Affairs

The Code offers protection for union members when participating in the activities of their trade union. At the same time the Code recognizes that the trade union is an organization free to govern its own affairs.

While a trade union, acting under its constitution, can take disciplinary action against union members, the Code requires certain steps be taken in cases other than non-payment of dues (Section 24). The Code requires service of charges in writing, a reasonable time to prepare a defence, a full and fair hearing including the right to use counsel, and a reasonable time to pay any fine imposed.

The Code provides protection from discriminatory discipline and membership practices by trade unions (Section 150). The Board will not usually deal with any such complaint until the individual has first used the trade union's internal appeal procedures. The Board will deal with the complaint right away if the employee is denied ready access to a reasonable appeal procedure.

The Code protects a union member from union discipline for engaging in work in accordance with the collective agreement or for refusing to do something

contrary to the Code. It also prohibits discipline for working "non-union" unless the union makes alternative unionized work available or the employee's work is affected by a lawful strike (Section 149(i)).

Employer Involvement in Trade Union Activities and Employer Free Speech

It is an unfair labour practice for an employer to participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union (Section 146). The employer must not contribute financial or other support to a trade union. However, certain common types of co-operation are permitted. When a union is the bargaining agent for the employer's employees, the employer can allow employees to perform union tasks on company time or allow company premises to be used for union business.

These prohibitions on employer interference still allow the employer to express opinions as long as coercion, threats, promises or undue influence are not used (Section 146(2)(c)).

Other Examples of Prohibited Practices

The following actions are examples of prohibited practices by employers:

-Bargaining with one trade union for a unit that is represented by another union (Section 147(e));

-Making it a condition of employment that a person not join a trade union (Section 147)(c)); and

-Denying employees their entitlement to pension rights or benefits because of their participation in a strike or lockout (Section 153).

The following actions are examples of prohibited practices by trade unions:

-Bargaining collectively or signing a collective agreement where another union is known to be the bargaining agent (Section 149(a)(b));

-Interfering with or participating in the formation of an employers' organization (Section 149(c));

-Attempting to organize on the employer's premises during an employee's working hours without the consent of the employer (Section 149(d));

-Using coercion, intimidation, threats, promises or undue influence to encourage trade union membership (Section 149(f)); and

-Interfering with the performance of work because certain employees are not members of a particular trade union (Section 149 (e)).

These are only examples of prohibited practices; any contravention of the Labour Relations Code can result in a complaint.

When an unfair labour practice complaint is made, what happens?

Usually, the Board appoints an officer to look into the complaint and try to assist the parties to resolve it between themselves. If the complaint remains unresolved, the Board may hold an informal or formal hearing, at which the parties will have an opportunity to present evidence and arguments.

If the Board finds the complaint is justified, it may take whatever interim or final action it feels is necessary to rectify the breach of the Code complained about, including ordering that:

- The practice be stopped;

- An employee suspended or discharged be reinstated and compensated;

- An employee be reinstated or admitted as a member of a trade union; or

- An unfair disciplinary action or penalty be lifted, and compensation paid (Section 16).

The Board's power to remedy unfair labour practice complaints does not interfere with an employer's right to suspend, transfer, lay off or discharge employees for proper and sufficient cause (Section 148).

In extreme cases the Board may remedy an unfair labour practice by granting or revoking a registration or certification. However, any such order is subject to a vote by the affected employers or employees.

The Construction Industry

The Construction Industry

The construction industry represents a large portion of the Alberta workforce. Construction work moves from project to project and involves many different types of skilled employees. Collective bargaining in the construction industry is governed by a special part of the Labour Relations Code.

Under the Code's definition, construction work includes the construction, alteration, decoration, restoration or demolition of buildings, roads, pipelines and similar projects, but excludes maintenance work and the delivery of goods to a construction site (Section 1(g)).

As the term is used in the Code, not all work performed by construction tradespeople is construction work. Service and repair work, for example, are excluded from the Code's special construction provisions, although they are routinely performed by the same people who do construction work.

For the construction industry, the Board has a policy of certifying employees on the basis of employment skills. This means the Board will certify an employer's carpenters, plumbers, electricians or sheet metal workers, each in separate bargaining units.

This practice is followed because the large majority of trade unions representing construction workers are organized on craft lines (e.g. electricians in the electricians' union, plumbers in the plumbers' union). Bargaining in the construction industry generally follows the same craft breakdown.

Registered Employers' Organizations

There are many employers in the construction industry. The Labour Relations Code gives these employers the opportunity to form employers'

organizations to bargain on their behalf with a group of trade unions within a particular trade and sector.

An employers' organization can apply to the Labour Relations Board for a registration certificate. As with trade union certification, an employers' organization, once registered, is authorized to bargain on behalf of all affected employers for a collective agreement that will be binding on all of them (Section 174).

An employers' organization can apply to be registered for a part of the construction industry. A "part" is a province-wide group of employers in one sector and in one trade jurisdiction. For example, an employers' organization could be registered to represent all the unionized employers in the province, engaged in plumbing and pipefitting work within the general construction sector.

This would mean that the local unions representing plumbers and pipefitters throughout the province would bargain with the registered employers' organization acting on behalf of all unionized employers employing plumbers and pipefitters within the general construction sector of the industry. The result would be a collective agreement that covered all those employers and employees. As new employers become certified, they too are bound by the registration collective agreement and must comply with its terms.

Once registered, an employers' organization has a duty to fairly represent all affected employers whether or not they belong to the employers' organization. A registered employers' organization may choose to assess dues from employers bound by the registration collective agreement. Any such dues must be assessed uniformly and be reasonably related to the organizations' duties under the Code. Unpaid dues may be collected by civil action (Section 163).

What is a trade jurisdiction?

A trade jurisdiction simply means a type of construction work. The trade jurisdictions the Board uses to grant registration certificates customarily reflect

the various categories used in the apprenticeship program to define the various trades qualifications. They usually also reflect the definitions used by building trade unions to define which union has authority to represent a particular group of workers.

What is a sector?

A sector of the construction industry is defined by the type of work done; the pipeline sector or the general construction sector, for example. These sectors are set by the Cabinet from time to time. Some contractors restrict their activities to a particular sector, others operate in several.

How does an employers' organization become registered?

An employers' organization may apply to become a registered employers' organization in much the same way as a trade union can apply to become certified. It must have filed a constitution or bylaws with the Board (Section 162). The organization must have 40 per cent of employers in the relevant part of the construction industry as members (Section 165). When the Board receives an application it conducts an inquiry to

determine whether the application is timely (considering any seasonal nature of the work) and whether the part of the industry claimed is an appropriate part for collective bargaining, and also whether the grouping of trade unions is appropriate.

If it is satisfied with these elements of the application, the Board will conduct a representation vote of the affected employers (Section 166).

The Effect of Construction Registration on Employers

How registration affects a construction employer depends on three factors. First, it depends on the bargaining relationships that particular employer has with the various building trade unions. Second, it depends on the parts of the industry (sectors and trades) in which the employer operates. Third, it depends on whether the majority of employers in those parts of the industry have chosen registration.

An employer is only affected by a registration if it has a bargaining relationship with a building trade union listed in that registration. The relationship may arise through certification, voluntary recognition or by the employer agreeing to be bound by terms in a registration collective agreement.

If there is no relationship between the employer and a relevant building trade union, the employer will not be directly affected by registration. If there is a bargaining relationship, the employer will be affected. The employer will also be bound by any registration agreement negotiated by the registered employers' organization because, by law, that organization has authority to bargain on the employer's behalf.

An employer is only bound by a registration to the extent of the employer's bargaining obligations with the trade union (Section 174). For example, while registration is always province-wide, an employer may only have a bargaining relationship with a local

trade union operating in a particular area.
The effect of registration will be equally limited. The effect of registration is also limited by the scope of the registration certificate. It applies only to the employer's operations in the particular sector and trade jurisdiction listed in the certificate and not to any other operations the employer may be engaged in.

What if the employer has a bargaining relationship with a union, but there is no registration in place?

It is up to unionized employers operating in a part of the construction industry to decide, collectively, whether they want registration. If a majority choose registration, it then covers all employers, including any minority employers who may not want it. If the majority decides against registration, then all employers are free to make their own bargaining arrangements and are not affected by registration for that part of the industry.

This means that the employer and the trade union with which it has a bargaining relationship can deal with each other one-on-one. They can negotiate directly with each other for a collective agreement. If they cannot reach agreement any strike or lockout action involves only the employees of the individual employer. Generally all the regular rules for non-construction bargaining apply.

If there is no registration in place employers can still choose the less formal group bargaining available to all employers under the Code (Section 60). Unlike registration, where an employer is bound as a result of the choice of a majority of employers, it is an employer's choice whether or not to become involved in voluntary Section 60 group bargaining.

What happens when a construction employer becomes certified?

If there is no registration certificate in place the employer is like any other employer and the same procedures set out elsewhere in this guide apply.

When a construction employer becomes subject to certification by a union local for activities falling under a registration certificate, that employer is affected by registration. That means if a collective agreement is in effect, the employer is immediately bound by that agreement and must comply with its terms and conditions. If no agreement is in effect, the employees and employers become part of the dispute between the union and the registered employers' organization and join that dispute at whatever stage it has reached.

Can the registration of an employers' organization be cancelled?

Yes. The Code allows parties affected by registration to apply for termination. The Board will cancel a registration where it is satisfied the registered employers' organization no longer enjoys majority employer support. There are time limitations on when such an application can be made. If termination is granted while a collective agreement is in force, the agreement continues to bind the various employers and trade unions on an individual basis (Sections 179-180).

The Construction Bargaining Cycle

The Labour Relations Code provides that any agreement to which the construction industry provisions of the Code apply must expire on April 30 each second (odd-numbered) year. This creates a specific bargaining cycle within the industry, with all collective agreements coming up for renegotiation at the same time.

A strike or lockout affecting one trade can easily affect other trades working on the same project. The provisions in the Code are designed to reduce these disruptions while preserving free but orderly collective bargaining.

Some time before the start of bargaining, the Labour Relations Board holds a hearing and decides on a consolidation order. For the limited purpose of registration, this order consolidates trade union groups.

When registered trades are consolidated they still bargain independently of each other. However, strike votes and strikes must all occur at the same time. The same is true of lockout votes and lockouts. Industry-wide co-ordinating agencies may be formed but do not take part in bargaining (Section 191). By requiring consolidated action, the Code prevents a series of shutdowns in the industry, with one trade after another shutting down the same construction project.

When there is a registration in place, the trade unions cannot bargain directly with the employer; they can do so only with the registered employers' organization. On one side of the negotiating table will be the group of trade unions representing the employees in that sector and trade jurisdiction within the province; on the other side of the table will be the registered employers' organization, speaking on behalf of all the employers who have a bargaining relationship with those trade unions.

Strike and Lockout Votes in Construction

Construction bargaining between registered employers' organizations and groups of trade unions often involve many employees and employers. Before a strike or lockout can occur, a Board-supervised vote must be taken. No strike or lockout can legally occur until such a vote has been taken and has resulted in a vote in favour of the strike or lockout.

Rather than take a separate strike or lockout vote for the employees or employers affected by each registration certificate, votes are supervised on a co-ordinated basis. A vote will not be conducted until at least 60 per cent of the groups of unions or registered employers' organizations grouped together in a consolidation order apply for a vote (excluding those groups that have already settled). These consolidation provisions only apply to unions and employers affected by registration.

Once the Board has a sufficient number of strike vote requests it will supervise one co-ordinated vote.

Employees in each trade will be polled separately, but once their votes are counted those votes will be added together to give an industry-wide total.

For a strike vote to be carried, 60 per cent of the employees, overall, must be in favour of strike action. In addition, a majority of employees in each of 60 per cent of the trade union groups must also support strike action (Section 183).

By checking support on a union-by-union, as well as an overall basis, the Code ensures strike action has industry-wide approval. The double majority test balances the influence of the larger and smaller trade unions in such an important decision.

Exactly the same rules and percentages apply to employers should they wish to conduct a lockout vote and take lockout action.

Should a strike or lockout vote fail, the parties would be forced to resume their negotiations without taking strike or lockout action. They could take a new vote later if some or all of the agreements remained unsettled.

Strikes and Lockouts in Construction

As with regular collective bargaining, no strike or lockout can take place without a notice and a supporting vote from the affected employers and employees. In the construction industry there is an additional requirement: all unions or registered employers' organizations affected by a Board consolidation order must take such action together. This rule only affects those groups of unions and organizations that have not already arrived at a collective agreement. Once such consolidated strike or lockout action has been taken, each trade can still settle its dispute and go back to work, even though the remainder of the trades stay out on strike or lockout.

Once a registration strike or lockout has lasted 60 days, an individual employer can make an interim deal

(called a "settlement") with the trade union (Section 80). That employer's work may then resume while the industry-wide dispute goes on. Such a settlement lasts only until the industry-wide agreement is concluded, or any shorter time the parties may have agreed upon.

Arbitrating the Last Disputes

Once 75 per cent of the registered employers' organizations and the groups of trade unions in a sector have settled their differences, the pattern of settlements is to some extent set. Recognizing this, the Code establishes a binding arbitration mechanism to settle the remaining disputes affected by registration in that sector. When settlements reach the 75-per-cent mark, the Minister of Labour will refer the remaining disputes to a board called the construction industry disputes resolution tribunal.

The effect of this referral is to end any strikes or lockouts that may have started. The Code requires the parties to go back to work at the old rates until the disputes resolution tribunal has met and rendered its decision on the terms of the new agreements (Section 187).

Separate Collective Agreements for Major Projects

Registration bargaining is province-wide. The Labour Relations Code allows an exception to this for certain major construction projects. An owner or principal contractor may apply to the Cabinet for authorization to bargain a collective agreement to apply only to the construction of that project.

If this approval is granted, the owner or principal contractor is given the authority to negotiate a collective agreement with the unions that will apply only to the contractors who work on the project. If the owner or principal contractor can negotiate such an agreement with the various building trade unions, work on that

project will then be excluded from any registration bargaining and registration collective agreements for as long as the project agreements last. Neither the owner (or principal contractor) nor any trade union can try to force such an agreement by strike or lockout action. This provision simply gives an opportunity to bargain such a project agreement voluntarily (Section 195).

Common Employer Declarations in the Construction Industry

The rules for common employer declarations that apply to non-construction employers also apply to construction employers. There are, however, two important modifications.

The Labour Relations Board is not empowered to make a common employer declaration in respect of a corporation, partnership, person or association of persons that does not employ employees who perform work of the kind performed by members of the trade union that makes the application (Section 190(3)). As well, the Code provides a partial moratorium on common employer declarations for one year from the date the Code came into force. This moratorium is subject to exceptions (Section 206).

Conclusion and Caution

This booklet is, by necessity, a summary. Those seeking more detailed information should review the Code, the Board's Rules of Procedure, Voting Rules, information bulletins and the decisions of the Board. Laws and policies may change. Anyone making a decision about their rights under the Code should not rely on this general guide, but should seek the help of an experienced practitioner.

Appendix
Information Bulletins

IB#	Topic
1	An Introduction to Labour Relations Board Proceedings
2	Processing Disputes and Applications
3	Officers' Investigations
4	Location and Conduct of Hearings
5	Notice to Attend/ Attend and Produce
6	Reconsideration
7	Filing Requirements for Trade Unions
8	Certification
9	Bargaining Unit Descriptions - General
10	Bargaining Unit Descriptions - Specific
11	Bargaining Unit Descriptions - Construction
12	Construction Registration
13	Revocation
14	Representation Votes
15	Proposal Votes
16	Strike/Lockout Votes
17	Strikes/Lockouts/Picketing
18	Duty of Fair Representation
19	Common Employer Declarations
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Transition Information Bulletins

T-1 Transition Procedures

T-2 Replacement Certificates

T-3 Construction/Registration Transition Procedures

Glossary

Arbitration: a method of settling a labour-management dispute by having an impartial arbitrator or arbitration board render a decision that is binding on both the trade union and the employer.

Bargaining agent: a trade union acting on behalf of employees in collective bargaining or as a party to a collective agreement with an employer or employers' organization.

Bargaining rights: the exclusive authority given to a trade union or registered employers' organization to represent a group of employees of a particular employer or a group of employers in the construction industry.

Bargaining unit: a group of employees appropriate for collective bargaining.

Cease-and-desist declaration: a declaration by the Labour Relations Board directing a party to stop an activity that is prohibited under the Labour Relations Code.

Certification: official recognition by the Labour Relations Board that a trade union is the exclusive bargaining representative for employees in a particular unit.

Collective agreement: an agreement in writing between an employer or employers' organization and a bargaining agent, containing terms or conditions of employment that are binding on the employer, the trade union and the employees covered by the agreement.

Collective bargaining: a method of determining wages, hours and other conditions of employment through direct negotiations between a trade union and an employer.

Construction: includes construction, alteration, decoration, restoration or demolition of buildings, structures, roads, sewers, water or gas mains, pipelines,

dams, tunnels, bridges, railways, canals or other works, but not including delivery to a construction site or maintenance work.

Dispute: when an employer and a trade union representing the employees cannot agree upon the terms and conditions of a collective agreement.

Disputes Inquiry Board: a board established by the Minister of Labour to inquire into and endeavour to settle a collective bargaining dispute.

Duty of fair representation: the duty of a trade union to fairly represent employees in the bargaining unit with regard to their rights under the collective agreement.

Employers' organization: an organization of employers acting on behalf of a number of employers, having as one of its objectives the regulation of relations between employers and employees.

Good-faith bargaining: bargaining in which the two parties make every reasonable effort to reach a collective agreement.

Grievance: a disagreement over the interpretation of a provision in a collective agreement, or an allegation by one party that the other has violated the terms of the agreement.

Grievance procedure: the process contained in a collective agreement for the settlement of disagreements over the interpretation of a provision in a collective agreement, or an allegation by one party that the other has violated the terms of the agreement.

Group of Trade Unions: one or more trade unions grouped together in an application for a registration certificate or in a registration certificate.

Interest Arbitration (collective agreement arbitration): a method of settling a collective bargaining dispute by having an impartial arbitrator or arbitration board render a decision about the contents of a collective agreement that is binding on both the trade union and the employer.

Labour Relations Code: the basic statute regulating labour relations and collective bargaining in Alberta.

Labour Relations Board: the agency established under the Labour Relations Code to administer the Labour Relations Code.

Lockout: the closing of a place of employment by an employer, the suspension of work by an employer, or the refusal by an employer to continue to employ employees for the purpose of compelling its employees, or to aid another employer in compelling its employees, to accept terms or conditions of employment.

Lockout notice: an announcement of an employer's intention to lock out employees, given in writing by an employer to the trade union and the mediator.

Lockout vote: a vote of an employer or employers' association to decide if it or the members wish to take lockout action.

Mediation: a method of encouraging and assisting in the settlement of collective bargaining disputes in which the parties to a dispute use a third person - called a mediator - to assist them.

Mediator: a person appointed by the Director of Mediation Services or, in some cases, agreed upon by the employer and the trade union to mediate.

Notice to bargain: a notice, served by either the trade union or employer on the other, to initiate collective bargaining.

Officer: a person designated by the Chairman of the Labour Relations Board as an officer of the Board for the purposes of the Labour Relations Code.

Open period: (also called a "window period") the period during which certain applications to the Labour Relations Board can be made.

Part of the Construction Industry: that part of the construction industry that operates within a particular trade jurisdiction and a particular sector.

Picketing: patrolling around but not on an employer's premises to increase the pressure on the employer to come to an agreement with the trade union.

Proposal vote: a vote conducted by the Labour Relations Board to determine whether or not a party wishes to accept a collective bargaining offer made by the other party, a mediator's recommendation or the recommendation of a Disputes Inquiry Board.

Raiding: an attempt by one trade union to induce members of another trade union to support the new trade union.

Registration: official recognition by the Labour Relations Board that an employers' organization is the exclusive bargaining agent for employers in a part of the construction industry.

Representation vote: a vote conducted by the Labour Relations Board to determine whether employees in a bargaining unit or employers in the construction industry want to have a particular trade union or employers' organization represent them as their bargaining agent or want to revoke those bargaining rights.

Returning Officer: a person in charge of a vote.

Revocation (decertification): the removal of the exclusive bargaining rights of a trade union by the Labour Relations Board.

Rights arbitration (grievance arbitration): a method of settling collective agreement interpretation difficulties by having an impartial arbitrator or arbitration board render a decision about the meaning of the provisions of the collective agreement that is binding on both the trade union and the employer.

Sector: a division of the construction industry specified in the regulations as determined by work characteristics (e.g. roadbuilding, general construction).

Strike: a cessation of work, a refusal to work, or a refusal to continue to work, by two or more employees acting in combination with a common understanding for the purpose of compelling their employer or an employers' organization to agree to terms or conditions of employment, or to aid other employees to compel their employer or employers' organization to accept terms or conditions of employment.

Strike notice: an announcement that the employees will go out on strike at a certain time, given in writing to the employer and the mediator by the trade union.

Strike vote: a vote by employees to decide if they are prepared to take strike action to settle a dispute.

Successor employer: an employer who becomes bound to a collective agreement or a certificate that was binding on another employer.

Successor union: a trade union that succeeds and takes over from another trade union by means of a merger, amalgamation or transfer of jurisdiction, and acquires the rights of the previous union under a certificate or a collective agreement.

Trade jurisdiction: a trade jurisdiction in the construction industry is a type of construction work (e.g. electrical work, carpentry). In establishing trade jurisdictions for the purposes of labour relations, the Board uses the various categories used in the apprenticeship program.

Trade union: an organization of employees that has a written constitution, rules or bylaws, and has as one of its objectives the regulation of relations between employers and employees.

Unfair labour practice: a contravention of any provision of the Labour Relations Code committed by an employer, employers' organization, trade union or individual.

Union security clause: a provision in a collective agreement making trade union membership or payment of union dues compulsory for all or some of the employees in a bargaining unit.

Voluntary recognition: the recognition of an employer of a trade union as the exclusive bargaining agent for a group of employees.

Wages: any salary, pay, overtime pay and any other remuneration for work or services however computed, but does not include tips and other gratuities.

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